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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ BAIL APPLN. 1177/2022  
VIPIN SINGH ..... Petitioner

Through: Mr. Lav Kumar Aggarwal, Mr. Gajendra Singh and Ms. Usha Garg, Advocates.

versus

STATE AND ANR. .... Respondents

Through: Mr. Laksh Khanna, APP for State along with SI Maneeta.  
Mr. Abhishek Saket and Ms. Sanna Harta, Advocates for UIDAI with Mr. Deepak Sain, AM-Legal for UIDAI.  
Mr. Shiv Chopra, Ms. Aadhyaa Khanna and Mr. Bharatt Grover, Advocates for prosecutrix along with Mr. Abhay, brother of the prosecutrix.

**CORAM:**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**ORDER**

% **01.11.2022**

1. An application has been preferred on behalf of the petitioner under Section 439 Cr.PC for grant of regular bail in FIR No. 118/2021 under Sections 363/366/376/506 IPC read with Section 6 of the POCSO Act, 2012 registered at Police Station Neb Sarai.
2. A copy of the petition be supplied to the learned counsel for the prosecutrix, as prayed.

3. Learned counsel for the petitioner has claimed that the age of the prosecutrix as per the copy of the Aadhar Card in his possession is 07.03.2001 and as such, she was a major on the alleged date of incident. Reliance is also placed upon the PAN Card as well copy of the voter I.D. Card issued to the prosecutrix.

4. On the other hand, it is pointed out by the learned APP for the State that as per investigation, the copy of the Aadhar Card furnished by the prosecutrix reflects date of birth as '2004'. Further, as per the date of birth certificate issued by the GNCT of Delhi, the date of birth is 07.03.2004.

5. In the aforesaid background, it was directed by this Court vide order dated 27.07.2022 that it is imperative that the correct particulars of the date of birth of prosecutrix/victim entered in Aadhar Card be confirmed by UIDAI.

6. It is submitted by the learned APP for the State as well as by Mr. Abhishek, learned counsel for the UIDAI that specific orders need to be passed by this Court in terms of Section 33 (1) of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 in case correct particulars are to be ascertained and shared by UIDAI. Learned counsel for the prosecutrix submits that he has no objection for verification of the correct date of birth by UIDAI on instructions from the brother of the victim.

7. However, the ascertainment of the correct date of birth of the prosecutrix/victim as per Aadhar Card is vehemently opposed by the learned counsel for the petitioner placing reliance upon the orders passed by the Co-ordinate Bench of this Court in Bail Application No. 1926/2022 dated

24.08.2022 in *Hanzla Iqbal Vs. The State & Anr.*

8. The proper determination of the age of the victim is important from jurisdictional perspective which determines the applicability of provisions of POCSO Act. It is imperative that the law operates in a balanced manner to ensure that the rights of the victim child are protected under the provisions of POCSO Act and at the same time, it is of paramount importance that the accused is not forced to face the trial under the rigorous provisions of POCSO Act which provides for stringent punishment, in case the victim happens to be a major on the date of the incident. The investigating agency during the course of investigation as well as Special Court during the course of trial have a duty to ascertain or determine and satisfy itself as to the age of victim considering the fact that trial under provisions of POCSO Act places presumption and existence of mental state under Sections 29 & 30 of the Act. Sub-section (2) of Section 34 of the POCSO Act also requires the Special Court to satisfy itself about the age of child and record in writing its reasons for arriving at a conclusion in this regard. The aforesaid objectives need to be kept in perspective even at the stage of bail or charge.

9. I am of the considered opinion that the objections raised by the learned counsel for the petitioner appear to be completely misplaced, as the ascertainment of correct date of birth of the prosecutrix is imperative to ensure that the trial proceeds in the correct direction. The authority cited by the learned counsel for the petitioner is distinguishable on facts as it never involved the issue of two dates of birth being claimed in respect of the same document. The date of birth furnished in one of the copies of Aadhar Card could be correct while the other would be fake, until and unless the same is

explainable on any other hypothesis, since the cards are updated in case of a child after a period of five years, as clarified by learned counsel appearing for UIDAI.

In the facts and circumstances, UIDAI is directed to furnish the details of the date of birth of prosecutrix as per records relating to Aadhar Card maintained in the Department.

List on 17.01.2023.

**ANOOP KUMAR MENDIRATTA, J.**

**NOVEMBER 1, 2022/A**